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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,509	02/27/2004	Wayne J. Gonnering	24.354	9088

28785 7590 12/28/2006  
JOHN R LEY, LLC  
5299 DTC BLVD, SUITE 610  
GREENWOOD VILLAGE, CO 80111

EXAMINER
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PEFFLEY, MICHAEL F

ART UNIT	PAPER NUMBER
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3739

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/28/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/789,509		GONNERING, WAYNE J.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Michael Peffley		3739	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 and 26-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-21 and 26-41 is/are allowed.
- 6) ☒ Claim(s) 1-10 and 22-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

Applicant's amendments and comments, received November 27, 2006, have been fully considered by the examiner. In particular, applicant's amendments have obviated the 35 USC 112 rejections. The following is a complete response to the November 27, 2006 communication.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

Claims 1-10 and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Cosmescu (5,836,909).

Cosmescu provides a device formed by two mating pieces comprising a sealing surface (inner surface of piece 112) extending parallel with the axis of the device and a resilient radial sealing member (O-ring 142) carried on the other mating surface (114) at a location that contacts and seals against the sealing surface. There would inherently be a radial force between the two pieces where the O-ring is engaged. The two pieces define a gas passageway and a conductor (130) extends through the pieces to conduct RF energy to a distal electrode (132). The sealing surface is generally cylindrically shaped (Figure 5a) and concentric about the axis. It is noted that the Cosmescu patent does not specifically describe the delivery of a gas through the central lumen and rather discloses a suction being applied to the passage. Applicant's recitation of the gas is deemed to be an intended use and the Cosmescu device is inherently capable of delivering a gas to tissue through the passage. The instant application claims fail to positively recite a gas source connected to the device. With regard to claim 25,

Art Unit: 3739

Cosmescu provides a retention mechanism (i.e. threads 146) the will restrain mating pieces (112 and 62) from rotation when fully engaged.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treconsky et al (4,901,719) in view of the teaching of Cosmescu ('909).

Treconsky et al has been addressed in the previous Office action. Treconsky et al provide a gas coagulation device whereby mating pieces are connected together to deliver gas and RF energy to the tip member. A nose piece (116) is connected to a handle member with a sealing member (100) carried on one mating piece and being resiliently compressed against a sealing surface to establish a gas tight seal (see Abstract). It is noted the sealing member (100) has a surface that is parallel to the axis as well as a surface orthogonal to the axis. Gas and RF energy are conducted through the pieces and the pieces are connected by rotating them together with the threaded fastener. Treconsky et al fail to specifically disclose a sealing member, such as an O-ring, which contacts and seals with radial compression force as recited in the claims. Rather, Treconsky et al rely on the threaded fastener for maintaining the seal.

Cosmescu, as addressed above, provides a mating assembly which provides a sealing surface between two handle components. In particular, Cosmescu teaches of the advantages of providing an O-ring sealing member (142) in addition to a threaded attachment (146) for adjoining two members (see Figures 5a and 5b).

To have provided the Treconsky et al device with an O-ring sealing member to provide a better sealing surface than just the threaded attachment means would have been an obvious modification for one of ordinary skill in the art, particularly since Cosmescu teaches of the advantages of using an O-ring sealing member on a threaded attachment means.

***Allowable Subject Matter***

Claims 11-21 and 26-41 are allowed.

***Response to Arguments***

Applicant's arguments filed November 27, 2006 have been fully considered but they are not persuasive.

With regard to the Cosmescu reference, applicant contends that the Cosmescu device is a smoke evacuator and is therefore not adapted to connect and electro-surgical unit to an electro-surgical accessory. The examiner disagrees. The preamble amendment to independent claims 1 and 22 do not specifically limit the structure of the device for use with a gas assisted electro-surgical unit. Rather, they merely suggest that the device is adapted to (i.e. capable of) be used with such a unit. The examiner maintains that the flow path of Cosmescu is inherently capable of providing a gas to the distal end of the device. Cosmescu already discloses an electrode within the flow path.

Art Unit: 3739

As such, the Cosmescu device is capable of, or adapted to, being connected to a gas assisted electrosurgical unit.

Also, Cosmescu fairly teach that it is known to provide an O-ring seal on a mating handpiece assembly to improve the connection seal. Such a teaching is deemed to be fairly applicable to the Treconsky et al device which also includes threaded, mating members and would benefit from such a sealing mechanism. As asserted in the above obviousness rejection, the examiner maintains that to have provided the Treconsky et al handpiece with an O-ring sealing member to improve the connection between the pieces would have been an obvious consideration for one of ordinary skill in the art in view of the teaching of Cosmescu.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


Art Unit: 3739

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Michael Peffley  
Primary Examiner  
Art Unit 3739

mp  
December 18, 2006